

SERVICE DATE – JUNE 27, 2018

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 1253

STATE OF SOUTH DAKOTA ACTING BY AND THROUGH ITS DEPARTMENT OF
TRANSPORTATION—ADVERSE DISCONTINUANCE OF OPERATING AUTHORITY—
NAPA-PLATTE REGIONAL RAILROAD AUTHORITY

Digest:¹ This decision grants an application filed by the State of South Dakota requesting third-party, or “adverse,” discontinuance of the operating authority of Napa-Platte Regional Railroad Authority over approximately 13.4 miles of rail line in South Dakota.

Decided: June 25, 2018

On March 29, 2018, as amended April 11, 2018, the State of South Dakota acting by and through its Department of Transportation (the State) filed an application under 49 U.S.C. § 10903 requesting that the Board authorize third-party, or “adverse,” discontinuance of the operating authority² of Napa-Platte Regional Railroad Authority (NPRRA) over approximately 13.4 miles of rail line extending from milepost (MP) 0.0, referred to as Napa Junction, in South Dakota, to MP 13.4+/- near Tabor, S.D. (the Napa-Tabor Line). Notice of the application was served and published in the Federal Register on April 18, 2018 (83 Fed. Reg. 17,209). No comments were filed. For the reasons set forth below, the Board will grant the State’s application.

BACKGROUND

The State provides the following background regarding its interest in this proceeding. It explains that the Napa-Tabor Line is part of a longer line that runs from MP 0.0 to MP 83.3 near Platte, S.D. (the Napa-Platte Line). The Napa-Platte Line was authorized for abandonment in

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² An adverse discontinuance application seeks a Board finding that the public convenience and necessity requires or permits the discontinuance of service by a carrier over a rail line, when that application is filed by someone other than that carrier. Such filings are also known as third-party applications and are termed “adverse” because they are often, though not always, opposed by the carrier holding the authority to operate.

1980 but, prior to being abandoned, was acquired by the State. See Ogilvie—Aban.—in S.D. Iowa, & Neb., AB 7 (Sub-No. 88) (ICC served May 14, 1980); see also Napa-Platte Reg'l R.R. Auth.—Modified Rail Certificate (2007 Modified Certificate), FD 35026, slip op. at 1-2 (STB served June 14, 2007).

The State further explains that, in 2007, NPRRA, a political subdivision of the State of South Dakota and a non-operating common carrier railroad, obtained Board authority to lease and operate the Napa-Tabor Line.³ See Napa-Platte Reg'l R.R. Auth.—Lease & Operation Exemption—Dakota Short Line Corp., FD 35025 (STB served May 31, 2007). With the State's consent, NPRRA subleased the Napa-Tabor Line and the Tabor-Ravinia Line to the Dakota Southern Railway Company (DSRC), a Class III carrier. NPRRA's last lease agreement with the State and DSRC's last sublease agreement with NPRRA both expired on September 20, 2015. The State claims that neither NPRRA nor any other rail carrier provided common carrier service over the Napa-Tabor Line between 2007 and September 20, 2015.⁴ The State further claims that, since September 21, 2015, the State has leased the Napa-Tabor Line and the Tabor-Ravinia Line directly to DSRC.

According to the State, following the termination of NPRRA's lease, the State requested that NPRRA seek a voluntary termination of its lease and operating authority over the Napa-Tabor Line, but NPRRA has not done so. The State now seeks Board authority through an adverse discontinuance proceeding to terminate NPRRA's regulatory authority to lease and operate the Napa-Tabor Line. The State asserts that NPRRA does not oppose the State's application for adverse discontinuance.

In a decision served in this proceeding on May 31, 2017, the State was granted exemptions from several statutory provisions as well as waivers of certain Board regulations that were not relevant to its adverse discontinuance application or that sought information not available to the State. See South Dakota—Adverse Discontinuance of Operating Auth.—Napa-Platte Reg'l R.R. Auth. (May 2017 Decision), AB 1253 (STB served May 31, 2017).

DISCUSSION AND CONCLUSIONS

The statutory standard governing discontinuance of operations is whether the present or future public convenience and necessity require or permit the proposed discontinuance. See 49 U.S.C. § 10903(d). In implementing this statutory standard, the Board shall consider whether

³ NPRRA also obtained a modified certificate of public convenience and necessity to operate a connecting segment, the Tabor-Ravinia Line, which runs from MP 13.4 to MP 54.5. See 2007 Modified Certificate, FD 35026, slip op. at 2. The State rail-banked the remaining segment of the Napa-Platte Line between Ravinia (MP 54.5) and Platte (MP 83.3). See S.D. Ry.—Notice of Interim Trail Use & Termination of Modified Rail Certificate (2007 Rail Banking), FD 31874, slip op. at 2 (STB served July 17, 2007); see also S.D. Ry. Certificate & Notice of Interim Trail Use, 2007 Rail Banking, FD 31874.

⁴ According to the State, DSRC used these lines for rail car storage but did not have any operating authority during that time to provide common carrier service over the lines.

the discontinuance would have a serious, adverse impact on rural and community development. Id. The Board may consider an “adverse” application to discontinue service so long as the applicant establishes that it has a proper interest in the proceeding. See Bos. & Me. Corp.—Adverse Discontinuance—New Eng. S. R.R., AB 32 (Sub-No. 100), slip op. at 3 (STB served Apr. 30, 2010). In an adverse discontinuance, the burden of proof is on the applicant. Id. (citing Cheatham Cty. Rail Auth. “Application & Pet.” for Adverse Discontinuance, AB 379X (ICC served Nov. 4, 1992)).

The circumstances here warrant granting the State’s adverse discontinuance application. The State, as the owner of the Napa-Tabor Line, has a proper interest in the proceeding. See, e.g., Lake Cty., Or.—Adverse Discontinuance of Rail Service—Modoc Ry. & Land Co., AB 1035 (STB served Nov. 17, 2009) (granting an adverse discontinuance application filed by the line’s owner); see also S. Pac. Transp. Co.—Discontinuance of Serv.—in S.F. Cty., Cal., FD 31486, slip op. at 2 (ICC decided Sept. 7, 1989) (noting that, as owner of the line, the petitioner “has the requisite interest to seek abandonment or discontinuance authority”). The record shows that NPRRA’s lease to operate over the Napa-Tabor Line expired in September 2015 and that DSRC, at the State’s direction, has obtained operating authority from the Board to provide common carrier service over the Napa-Tabor Line in the event a shipper requests service in the future.⁵ Thus, there will be no cessation of the availability of service, and granting the application will not harm rural or community interests. Lastly, no parties, including NPRRA, have filed in opposition to the application or attempted to refute any of the State’s claims. Accordingly, the Board finds that the present or future public convenience and necessity require or permit the discontinuance of operations by NPRRA over the above-described line of railroad. To ensure that NPRRA is fully informed of this action, the Board will require the State to serve a copy of this decision on NPRRA within five days of the service date of this decision and to certify to the Board that it has done so.

In approving an abandonment or discontinuance application, the Board must ensure that affected railroad employees will be adequately protected. See 49 U.S.C. § 10903(b)(2). However, when issuing abandonment or discontinuance authority for railroad lines that constitute the carrier’s entire system, the Board generally does not impose labor protection, unless the evidence indicates the existence of (1) a corporate affiliate that will continue substantially similar rail operations or (2) a corporate parent that will realize substantial financial benefits over and above relief from the burden of deficit operations by its subsidiary railroad. Mo. & Valley Park R.R.—Discontinuance of Serv. Exemption—in St. Louis Cty., Mo., AB 1057X, slip op. at 2 (STB served June 15, 2010).

Here, the State is seeking discontinuance authority for NPRRA’s last remaining operating rights, and therefore, its entire system. As noted above, NPRRA obtained operating authority in 2007 over two segments of the Napa-Platte Line—the Napa-Tabor Line and the Tabor-Ravinia

⁵ See Dakota S. Ry.—Modified Certificate of Pub. Convenience & Necessity—Yankton, Bon Homme, & Charles Mix Ctys., S.D., FD 36086 (STB served Jan. 25, 2017). According to the State, there are no shippers currently using the Napa-Tabor Line, and no shipments have moved over the Napa-Tabor Line since 2007. (State Appl. 14.)

Line—which together appear to comprise NPRRA’s entire system. (See State Pet. for Waiver & Exemption 9 (stating that these two connecting segments constitute NPRRA’s entire system).) In 2017, the Board granted the State’s request for an order terminating the rights held by NPRRA pursuant to a modified certificate to operate over one of those segments, the Tabor-Ravinia Line. See South Dakota—Pet. for Declaratory Order, FD 36096 (STB served June 14, 2017). In this decision, the Board will now grant the State’s application for adverse discontinuance of NPRRA’s operating rights over the remaining segment of NPRRA’s system, the Napa-Tabor Line. According to the State, no corporate affiliate of NPRRA will continue operations over the Napa-Tabor Line, and NPRRA has no corporate parent. (See State Pet. for Waiver & Exemption 9.) Accordingly, because NPRRA no longer possesses operating rights over either of the two segments and neither of the two exceptions apply, the Board will not impose employee protection conditions.

Based on the exemptions and waivers the Board granted in the May 2017 Decision, the Board will not entertain trail use/rail banking requests, public use requests, or offers of financial assistance. The May 2017 Decision also waived compliance with environmental regulations.⁶ Accordingly, no environmental assessment was prepared in this proceeding. See 49 CFR § 1105.6(c), 1105.8(b).

For the reasons discussed above, the Board finds that the State, as the owner of the Napa-Tabor Line, has a proper interest in this proceeding; the present or future public convenience and necessity require or permit the discontinuance of operations by NPRRA over the above-described line of railroad; and discontinuance of operations by NPRRA will not result in a serious, adverse impact on rural and community development. Accordingly, the Board will grant the State’s application for adverse discontinuance.

It is ordered:

1. The State’s application for the adverse discontinuance of operations by NPRRA is granted.
2. The State is directed to serve a copy of this decision on NPRRA within five days after the service date of this decision and to certify to the Board that it has done so.
3. This decision is effective on July 27, 2018. Any petition to stay or reopen must be filed as provided at 49 CFR § 1152.25(e).

By the Board, Board Members Begeman and Miller.

⁶ Because there will be an environmental review during an abandonment, this discontinuance does not require an environmental review.